

IPReg PII Sandbox Guidance

Purpose

1. This guidance sets out how IPReg will exercise its discretion to grant a waiver of our Professional Indemnity Insurance (“PII”) requirements to those entering the PII Sandbox.

What is the PII sandbox?

2. IPReg wants to facilitate innovation and competition in the provision of IP legal services. We have set up the sandbox to enable the testing of alternative PII arrangements. The PII sandbox will provide a way for firms or sole traders to obtain PII from insurers who are not on IPReg’s list of participating insurers. This will then enable them to apply to be admitted to, or remain on, the IPReg registers and be regulated. It may also be of interest to firms who are able to obtain cover from a participating insurer but who want to make alternative arrangements (perhaps for commercial reasons);
3. The regulatory sandbox concept has been used extensively in financial services and other regulated sectors. Regulatory sandboxes are a ‘safe space’ in which to test innovation amid enhanced scrutiny without the usual regulatory penalties for technical breaches. They can also be a helpful way of gathering evidence;
4. Our preliminary analysis of PII models in other [legal] markets has led us to consider whether the current structure of a mutual with a large market share together with a qualifying insurer regime with compulsory Minimum Terms and Conditions (MTCs) is a proportionate model for the regulated IP sector. The sandbox may help us to build up an evidence base that will test that theory. The sandbox will also enable us to assess whether it may be more proportionate for firms to assess their own level of risk and obtain PII targeted at those risks than for the IPReg as the regulator to specify very broad PII requirements that apply across the whole sector which may impose unnecessary costs on firms;
5. The PII sandbox is only relevant for the first layer of PII – additional cover is for you to choose on the open market. (This is also the case if the first layer of cover is provided by a participating insurer.)

Who can apply to be admitted to the PII sandbox?

6. We anticipate that the sandbox may appeal to those ineligible for PAMIA membership due to factors such as:

- Firm structure (including those with more than 50% non-attorney ownership);
 - Services provided, perhaps because they provide (or want to provide) a range of non-legal/non-IP services;
 - Working for a firm that is not regulated by IPReg, e.g. attorneys working in private practice for non-UK regulated firms (perhaps because the head office is based overseas).
7. Firms and sole traders currently insured by a participating insurer can also apply to be admitted to the PII sandbox.

Will my firm need to show a degree of novelty in the services we plan to offer in order to be eligible to apply for the PII sandbox?

8. No – we welcome applications from all types of firms.

What do I have to do to be admitted to the PII sandbox?

9. In applying to the sandbox you will need to:
- a. Explain why you consider it would be advantageous for you to obtain PII from an alternative insurer. This could include information about the cost to your firm, better protection for your clients or enhanced services being available to your clients;
 - b. Set out the nature of your client base (e.g. whether they tend to be individual consumers; micro-businesses; SMEs; FTSE 100 or FTSE 250 companies) and the range of services that you provide to them;
 - c. Provide an assessment that sets out the major/common risks that are involved in the services you provide to your clients and demonstrate how these are adequately covered by the PII you have been able to obtain (or have been offered) or how you have mitigated a risk (e.g. by not holding client money). Please note that we expect the PII policy to have an option for run-off cover in the event that your firm closes without finding another firm (a “successor practice”) to take over your clients’ files;
 - d. Set out the level of cover that the policy will provide and why you consider that level to be appropriate;

- e. Provide us with the information that you propose to give to your clients about your PII arrangements.

How will IPReg assess applications to be admitted to the PII sandbox?

10. IPReg's consideration of your application is likely to include the following (this list is not exhaustive):
- a. The thoroughness of the risk assessment;
 - b. The benefit to consumers and competition – e.g. particularly if a firm proposes to provide competitively-priced services to individual consumers and micro-enterprises who may not otherwise be able to afford to get advice – or to provide innovative delivery of services generally;
 - c. Whether you have previously been subject to disciplinary action or have been investigated for not having compliant PII (by IPReg or another regulator);
 - d. Advice from our external expert who we may ask to consider the application.

Is there a cost to enter the PII sandbox?

11. There is no cost to apply to enter the sandbox. However, if your firm is not already registered with IPReg then you will have to pay an application fee and, if then registered, annual practising fees for your firm and registrants. Information about our fees can be found [here](#).

Who will make the decision?

12. The CEO will make the decision whether to admit the applicant to the sandbox and, if so, whether there should be any conditions imposed on their practice. The CEO will take advice from the Board if necessary. The CEO may also ask the Board to make the decision.

Can I appeal against IPReg's decision?

13. There is no right of appeal.

What do I have to do when I am in the PII sandbox?

14. Provide data to IPReg about:

- a. Any claims and the cause of those claims when they occur. State whether the claims will be covered under your PII policy;
- b. The outcome of those claims once they are settled;
- c. Any anticipated claims and the cause of those anticipated claims. State whether the claims will be covered under your PII policy if they materialise;
- d. Any significant changes to your risk assessment.

Will time in the PII sandbox be time-limited?

15. IPReg wants firms in the PII sandbox to have certainty to plan their commercial activities. We do not therefore plan to place a cap on how long a firm can remain in the PII sandbox. However, if a firm experienced a number of claims then we would need to discuss with the firm what impact that was having on their clients, recognising that the number of claims may not be directly related to the type of PII in place.
16. IPReg anticipates that it will review the evidence gathered from sandbox participants annually. Over time, this will enable us to build an evidence base to assess whether we need to make any changes to our overall approach to PII. If we decide that we do need to make changes, then we would consult on them. That may lead to the closure of the PII sandbox after the consultation has ended and new rules are in place (e.g. because it is no longer needed if more insurers enter the market and/or there is no longer a requirement for PII to comply with MTCs). In addition, the LSB (our regulator) plans to undertake work [LINK] on PII and this may also lead to the need to consult on changes to our approach.

How do I withdraw from the PII sandbox?

17. If you want to withdraw from the PII sandbox, you should discuss this with IPReg as soon as possible. Issues that we will need to discuss are:
 - a. Your reasons for leaving the PII sandbox;
 - b. If relevant, the arrangements you plan to make for your clients (for example if you have found a successor practice to take over their files);
 - c. If relevant, whether you have run-off cover in place from your insurer.

What will IPReg do to assess the results from the PII sandbox?

18. IPReg will monitor carefully the impact of the PII sandbox. We intend to publish our analysis including the lessons we learn from the process. We will discuss with PII sandbox participants how we can do this to ensure commercial confidentiality.

Version	Date	Author	Rationale
V1.0	24.3.23	IPReg	Submitted with LSB application